CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	☐ Force	☐ Discourt.	☐ U.S.
Magdalena Azmitia		Squad #3	201906935	✓ Abuse	O.L.	☑ Injury
Incident Date(s)		Location of Incident:	•	Precinct:	18 Mo. SOL	EO SOL
Friday, 07/26/2019 11:40 PM		Woodycrest Avenue ar	nd West 167th Street	44	1/26/2021	9/12/2021
Date/Time CV Reported		CV Reported At:	How CV Reported:	Date/Time	Received at CCF	RB
		Precinct	In-person	Tue, 08/06	/2019 11:06 AM	
Complainant/Victim	Type	Home Addre	ess	,		
Subject Officer(s)	Shield	TaxID	Command			
1. POM Jorge Flores	07680	954816	044 PCT			
Witness Officer(s)	Shield N	o Tax No	Cmd Name			
1. POM Vincent Mauro	18615	958892	044 PCT			
Officer(s)	Allegatio	on		Inve	stigator Recon	nmendation
A.POM Jorge Flores	Abuse: P	olice Officer Jorge Flor	es stopped § 87(2)(b)			
B.POM Jorge Flores	Abuse: Police Officer Jorge Flores threatened to arrest \$87(2)(b)					
C.POM Jorge Flores	Abuse: Police Officer Jorge Flores searched § 87(2)(b)					
D.POM Jorge Flores	Abuse: P	olice Officer Jorge Flores s property.	es damaged § 87(2)(b)			
E.POM Jorge Flores	Abuse: P	olice Officer Jorge Flor t for ^{§ 87(2)(b)}	es did not obtain me	dical		
F.POM Jorge Flores	Abuse: P	olice Officer Jorge Flor 87(2)(b)	es refused to provide	e his		
G.POM Jorge Flores	Abuse: P	olice Officer Jorge Flor with a business card.	-	87(2)(b)		

Case Summary

filed this complaint in On July 27, 2019, § 87(2)(b) and her mother § 87(2)(b) person at the 44th Precinct stationhouse. § 87(2)(b) was a reporting non-witness. The complaint was forwarded to the CCRB and to IAB, generating log #19-28930 [BR 01]. On July 27, 2019, at approximately 11:40 PM, § 87(2)(b) was walking on West 167th Street between Anderson Avenue and Woodycrest Avenue in the Bronx when she stopped next to a car to allegedly take something out of her bag and urinate. PO Jorge Flores of the 44th Precinct, who was driving by with his partner PO Vincent Mauro of the same command, stopped \$87(2)(b) (Allegation A, Abuse of Authority: §87(2)(9) §87(2)(6) fled from PO Flores, who ran after her towards Woodycrest Avenue. While §87(2)(b) was running across Woodycrest Avenue, an oncoming vehicle struck her. §87(2)(b) stopped on the opposite corner of West 167th Street and Woodycrest Avenue, where PO Flores allegedly stated that he was going to arrest for tampering with a car (Allegation B, Abuse of Authority: §87(2)(9) Flores allegedly searched 37(2)(b) s bag by turning it upside down and spilling the contents onto the sidewalk, allegedly resulting in damage to her phone screen (Allegations C and D, Abuse PO Flores did not offer § 87(2)(b) of Authority: § 87(2)(g) medical attention regarding her involvement in the vehicle collision (Allegation E, Abuse of Authority: §87(2)(9) Flores allegedly did not provide his name \$37(2)(5) (Allegation F, Abuse of Authority: PO Flores left the scene without providing a business card to \$87(2)(b) (Allegation G, Abuse of Authority: § 87(2)(9) There was no body worn camera (BWC) footage of this incident. The investigation obtained surveillance footage from Pioneer Market at 1150 Woodycrest Avenue [BR 3-5].

m Pioneer Market at 1150 Woodycrest Avenue [BR 3-5].

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Jorge Flores stopped § 87(2)(b)

It is undisputed that PO Flores and PO Mauro saw §87(2)(b) next to a parked vehicl
and that PO Flores stopped her on suspicion of auto stripping. That \$87(2)(b) was urinating o
the sidewalk next to the car is undisputed. It is also undisputed that \$87(2)(b) fled from PC
Flores, who gave chase. § 87(2)(9)
testified that while walking on West 167 th Street towards Woodycres
Avenue, she stopped next to a parked car for approximately two minutes [BR 06]. Although
stated that she stopped to remove something from her bag, surveillance footage show
that she stopped to urinate on the sidewalk [BR 03]. §87(2)(b) was wearing a white dress with
shorts underneath, neither of which had pockets, and sandals. §87(2)(b) had a small backpac
with her. PO Flores and PO Mauro's vehicle stopped on the other side of the parked vehicle. PO
Flores exited and began running towards her, and \$87(2)(b) ran away from him. \$87(2)(b)
noted that she fled because she did not realize that PO Flores was a police officer.
PO Flores and PO Mauro testified that they were driving on West 167th Street, an area i
which auto-stripping, the crime of removing parts from vehicles, is a chronic condition [BR 10, 11]
PO Flores clarified that it is common for individuals to steal parts from seemingly abandoned vehicle
in parking lots and on sidewalks in that area. PO Flores and PO Mauro observed §87(2)(b)
pressed against a vehicle as if she was looking into it, and PO Flores suspected that she was attempting
to strip the vehicle. PO Mauro added that \$87(2)(b) was "fidgeting" next to the parked vehicle
noting that §87(2)(b) bent down as if she was putting something on the ground, and began
walking away. PO Flores saw §87(2)(b) s backpack, which he noted could have had "an
weapons" in it which could be used to break into vehicles. PO Mauro testified that he did not notic
s backpack upon first seeing her. PO Flores did not suspect \$87(2)(b) of havin

any specific tools in the bag. Neither PO Flores nor PO Mauro testified to seeing that \$87(2)(b) was urinating next to the car at the time. PO Flores informed PO Mauro of his observations and instructed him to slow down. PO Mauro added that, although he had no discussion with PO Flores regarding the decision to stop \$87(2)(b) he contributed to initiating the stop by stopping the car. As PO Flores approached \$87(2)(b) he stated, "Police." \$87(2)(b) made a downward gesture, but PO Flores did not see whether she dropped anything. PO Mauro testified that \$87(2)(b) made the downward gesture and began walking away before PO Flores exited the vehicle to stop her. PO Flores cited the precinct conditions, \$87(2)(b) s body language, and the downward gesture as the reasons he decided to initiate the stop. As \$87(2)(b) ran, PO Flores attempted to grab her, and \$87(2)(b) swung at him, brushing his right arm, before fleeing towards Woodycrest Avenue.

Stop Report \$887(2)(b) prepared by PO Flores regarding this incident is consistent

with his testimony [BR 08]. The narrative regarding the stop notes that he observed [37(2)(b)] on a public sidewalk pressed against a parked vehicle and, upon PO Flores exiting his vehicle, [37(2)(b)] gestured downward and fled on foot. Body language, gesture, and concealing or possessing a weapon are listed as the factors that led to the stop. The narrative regarding the search notes that [387(2)(b)] was "in possession of a backpack that could be used to store weapons or burglar tools to commit the crimes of auto stripping/criminal possession of a weapon." PO Flores noted in the report that the period of observation prior to the stop was one minute.

The investigation obtained surveillance footage from three different external cameras at Pioneer Market, all on West 167th Street. The first camera, the video from which is attached to IA 15, appears to be located on West 167th between Anderson Avenue and Woodycrest Avenue [BR 03]. Beginning at the 20 second mark, the footage shows [87(2)(b)] walking on the sidewalk from Anderson Avenue towards Woodycrest Avenue. [BR 03] appears to have difficulty walking in a straight line, repeatedly stopping and stumbling in a way that indicates her intoxication. [87(2)(b)] is then seen stopping next to a black vehicle near the camera and crouching to urinate on the sidewalk. [87(2)(b)] faces away from the vehicle. [87(2)(b)] then retrieves what appears to be a packet of wipes from her bag, after which she drops one on the ground and moves out of frame. Seconds later, PO Flores and PO Mauro's vehicle stops next to the vehicle by which [87(2)(b)] was standing, and PO Flores is seen exiting.

The second video, from IA 16, comes from a camera which appears to be located closer to the corner of West 167th Street and Woodycrest Avenue [BR 04]. In the video, after \$\frac{37(2)(b)}{2}\$ urinates, she turns towards the vehicle as she retrieves the wipes from her bag. \$\frac{37(2)(b)}{2}\$ faces the vehicle for a total of eight seconds before beginning to walk away (57 seconds to 1:04 minutes). PO Mauro and PO Flores' vehicle appears in frame at 59 seconds and stops near \$\frac{37(2)(b)}{2}\$ at 1:04 minutes. PO Flores exits the vehicle immediately after it stops and runs around the parked vehicle towards \$\frac{37(2)(b)}{2}\$ As noted in PO Flores' testimony, PO Flores reaches his hand towards \$\frac{37(2)(b)}{2}\$ as he approaches, and \$\frac{37(2)(b)}{2}\$ briefly extends her arm towards his shoulder to push him away before running towards Woodycrest Avenue. PO Mauro briefly exits his vehicle and watches PO Flores chase \$\frac{37(2)(b)}{2}\$ PO Mauro then gets back in the vehicle and drives away in reverse.

The third camera appears to be located approximately 30 feet away from the corner of Woodycrest Avenue and faces the intersection of West 167th Street and Woodycrest Avenue [BR 05]. The footage is attached to IA 17. PO Mauro and PO Flores' vehicle is seen turning right from Woodycrest Avenue onto West 167th Street at 24 seconds.

§ 87(2)(g)

According to NYPD Patrol Guide Procedure 212-11, a Level 3 Terry Stop requires reasonable suspicion, which exists when "the information known to the member of the service would

make an ordinarily prudent and cautious police officer under the circumstances believe criminal activity is at hand," and requires articulate specific facts establishing justification for the stop [BR 12].

Both *People v Ferry*, 152 AD2d 952 [4th Dept 1989] and *People v De Bour*, 40 NY2d 210 [1976] maintain that innocuous behavior alone does not generate reasonable suspicion that a crime is at hand [BR 13, 14]. Furthermore, an individual's mere presence in a high-crime area also does not constitute reasonable suspicion in the absence of some other indication of criminality, as noted in *People v Riddick*, 70 AD3d 1421 [4th Dept 2010] [BR 15].

Allegation (B) Abuse of Authority: Police Officer Jorg	e Flores threatened to arrest § 87(2)(b)
Allegation (C) Abuse of Authority: Police Officer Jorg	
Allegation (D) Abuse of Authority: Police Officer Jorg	ge Flores damaged § 87(2)(b) s
property.	
I. I. A. I. DOEL I. Investment	1 6
It is undisputed that PO Flores searched \$87(2)(b)	s bag after § 87(2)(b) provided
consent. § 87(2)(9)	
	s port 1
•	from PO Flores, she ran across Woodycrest
Avenue and was struck by a vehicle, which resulted in	
continued running until she reached the other side of Woo	
standing in front of a building [BR 06]. As PO Flores app	
shield and realized that he was a police officer. PO Flores	
her bag but did not say what he was looking for there.	· ·
chased her, and he told her to give him her bag. PO Flor	
up" for tampering with a car. PO Flores state	
about individuals trying to break into cars in the area and	
them." §87(2)(b) said, "That's not true, but you of	can check my bag. I don't have anything
inside," and handed her bag to him. PO Flores turned \$87/2	s bag upside down until all its
contents fell onto the sidewalk. § 87(2)(b) had her	wallet, pens, lipstick, a notebook, and her
cell phone in the bag at the time. §87(2)(b) s cell p	shone screen cracked upon impact with the
sidewalk. The investigation did not have sufficient inform	

who may have witnessed the interaction.

PO Flores testified that, upon approaching §87(2)(b) he asked why she was running from the police and what was going on [BR 10]. §87(2)(b) apologized repeatedly and smelled strongly of alcohol. PO Flores explained that she was stopped for auto stripping and for the fact that she might be concealing a weapon. PO Flores then asked to search § 87(2)(b) s bag. PO Flores could be armed and dangerous. PO Flores did noted that there was a possibility that §87(2)(b) not recall whether he told § 87(2)(b) that she did not have to consent to having her bag searched. gave verbal consent, although PO Flores did not specify what § 87(2)(b) and PO Flores took the bag placing it on the ground and kneeling to search it. PO Flores did not find anything in the bag. While PO Flores searched the bag, §87(2)(6) made suggestions regarding compartments in the bag that he could search. PO Flores did not recall dumping the contents of the bag onto the street. § 87(2)(b) also explained that she had stopped to urinate and apologized, stating that she wanted to go home. In his CCRB interview, PO Flores noted that \$887(2)(b) could have been arrested for obstruction of governmental administration, resisting arrest, assaulting a police officer, public lewdness based on the fact that she had been urinating in the street, or public urination. PO Flores did not recall whether he told § 87(2)(b) that he would "lock her up." PO PO Flores noted that, although he Flores used his discretion and opted not to arrest §87(2)(b) was equipped with a BWC, it had not been docked properly for charging at the stationhouse and the battery had been depleted by the time the incident occurred.

In the Stop Report prepared by PO Flores, he noted that ser/(2)(6) gave consent for PO Flores to search her bag [BR 08.] He also listed services a demeanor was "confused/intoxicated."

PO Mauro testified that he joined PO Flores and \$87(2)(6) at the corner while they were speaking [BR 11]. PO Mauro did not hear what they were talking about and did not see whether PO Flores was searching for anything at that point. He did not hear PO Flores ask for permission to search for \$87(2)(6) asked, "Can I go home?" but did not recall anything else she said. PO Mauro noted that \$87(2)(6) was intoxicated because her speech was slurred. PO Mauro then returned to the initial location of the stop, where he believed \$87(2)(6) had dropped something.

The surveillance footage from Pioneer Market did not clearly show sinteraction with PO Flores on the opposite corner of West 167th Street and Woodycrest Avenue [BR 05].

NYPD Patrol Guide Procedure 212-11 states that, under a level 3 Terry Stop, an officer may request consent to search the stopped individual, and that the consent must be voluntarily given [BR 12].

People v Hill, 153 AD3d 413 [1st Dept 2017] notes that consent to search must be a free and unconstrained choice and that official coercion, even if subtle, nullifies apparent consent [BR 16]. Whether an individual's consent to search is voluntary is based on the totality of the circumstances, which include: whether the consent was given while the individual was in police custody; the personal background of the individual, including their age or prior experience with the law; whether the individual offered resistance or was cooperative; and whether the police advised the individual of their right to refuse consent.

The following sections of the NYC Administrative Code enumerate the criteria that officers must meet when seeking to consent to search a person, vehicle, or home [BR 23]. Valid consent to search requires that the officer:

NYC Administrative Code 14-173(a)(1) - articulates, using plain and simple language delivered in a non-threatening manner, that the person who is the subject of the search is being asked to voluntarily, knowingly, and intelligently consent to the search, and explaining that the search will not be conducted if the person refuses to consent to the search;

NYC Administrative Code 14-173(a)(2) - must obtain consent without threats or promises of any kind being made to the individual;

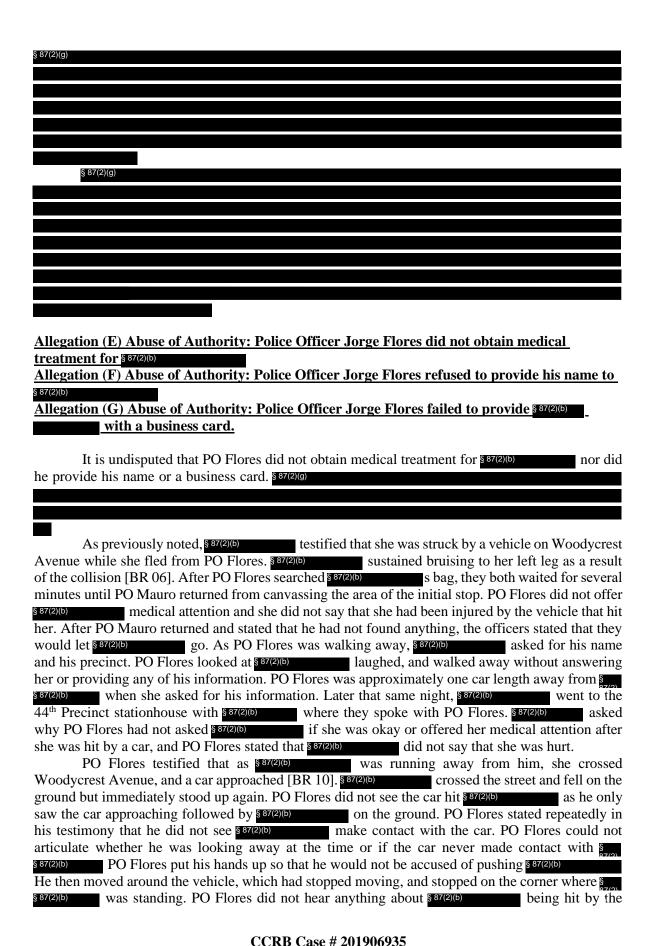
NYC Administrative Code 14-173(a)(3) - must affirm that the individual understands the information communicated as per subsection (a)(l);

NYC Administrative Code 14-173(a) (4) - must refrain from conducting such search where consent has not been obtained; and

NYC Administrative Code 14-173(a)(5) - must utilize interpreter services as appropriate, including the use of bilingual officers and telephonic interpretation, when seeking consent from an individual who has limited English proficiency.

Additionally, according to NYC Administrative Code 14-173(b)(1), if the officer is equipped with a BWC, the officer must record the aforementioned presentation of the consent to search and the individual's response, whether or not the civilian consents (notwithstanding the other situations whereby officers equipped with BWC are required to record interactions with the public). Per NYC Administrative Code 14-173(b)(2), regardless of the officer having a BWC, the officer must properly document the time, location, and date of such search and the apparent race/ethnicity, gender, age of the person who was the subject of the search and the officer's name, precinct, and shield number.

§ 87(2)(g)							
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§ 87(2)(g)							
§ 87(2)(b) allegedly reques	PO Flores pu	idered stopped and	on foot fo	to leave.	87(2)(g)	• • • • • • • • • • • • • • • • • • • •	
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PO Flores, § 87(2)		and PO Flores s PO Flores inform				ave her bag and PO Flor	(2)
	did not recall v	whether her inform	ned her of her r	right to refu	ise.		
§ 87(2)(g)							
that the battery documented \$87(2)(9)	•	Although and as such the co-		recorded [H	3R 10]. Fina		
was	clearly intovio	Additional ated, as she smel	ly, both PO Fl			17.8/2	3)
was	cicarry intoxic	aicu, as sile sillei	ica of alcohol a	ina nei spec	cen was stul	10d. 89(5)(9)	



vehicle on Woodycrest Avenue until he spoke with her at the stationhouse later that night. PO Flores believed that if \$87(2)(0) had been hit by the vehicle, it would have been more reasonable to stay on the ground than to stand immediately as she had done. After the search occurred and PO Mauro stated that he had not found anything, PO Flores said, "Is there anything else you need from me?" to which \$87(2)(0) said no. PO Flores noted that the question was inclusive of but not limited to whether \$87(2)(0) needed his name, rank, command, a business card, medical attention, or a supervisor at the location. \$87(2)(0) asked repeatedly if she could leave. \$37(2)(0) at the stationhouse later that night, during which \$87(2)(0) stated that a vehicle had struck her. Based on \$87(2)(0) s complaint at the stationhouse, PO Flores prepared a police accident report regarding the collision, as well as a criminal complaint report regarding the driver leaving the scene.

PO Mauro testified that when he joined PO Flores and \$87(2)(b) it did not appear to him that \$87(2)(b) was injured [BR 11]. PO Mauro did not hear \$87(2)(b) ask PO Flores for any information nor did he recall hearing PO Flores explain the reason for the stop or offer any information to \$87(2)(b) PO Flores did not recall hearing PO Flores say, "Can I get you anything?" PO Mauro later learned that \$87(2)(b) may have been hit by a vehicle when \$87(2)(b) appeared at the stationhouse.

Flores chasing \$87(2)(b) towards Woodycrest Avenue beginning at the 35 second mark [BR 05]. PO Flores' BWC falls off and he briefly stops to pick it up before continuing to pursue \$7(2)(b) As \$87(2)(b) runs across Woodycrest Avenue, a black sedan approaches from her left and strikes her. \$87(2)(b) is knocked off her feet and onto the hood of the car. \$87(2)(b) then slides off the hood of the car, appears to stop briefly on the other side, and continues to run. PO Flores appears to be facing \$87(2)(b) s direction as she is struck by the vehicle but does not react and proceeds to run around the rear of the car to continue pursuing \$87(2)(b) The vehicle remains on scene for less than a minute before leaving.

NYPD Patrol Guide Procedure 217-01, regarding general procedure for responding to vehicle collisions, notes that officers must ascertain if there are any injuries and request an ambulance, if needed [BR 17].

NYPD Patrol Guide Procedure 203-09 states that officers must courteously and clearly state their rank, name, shield number and command, or otherwise provide them, to anyone who requests the officers to do so [BR 18].

New York City Administrative Code §14-174 outlines protocol for identification of all police officers engaging in law enforcement activities, including Level 3 stops, frisks, and searches of persons or property [BR 19]. In such cases that do not result in an arrest or summons, officers who conduct law enforcement activities must offer a business card to the person who is the subject of those law enforcement activities.

NYPD Patrol Guide Procedure 203-09 also addresses the provision of officer identification in law enforcement activities that do not result in arrests or the issuance of summonses, including frisks and searches of persons or property [BR 18]. In such cases, procedure states that officers must offer business cards upon the conclusion of law enforcement activities unless exigent circumstances are present.

§ 87(2)(g)	
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Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 37(2)(b) has been a party [BR 20].
- PO Flores has been a member of service for six years and has been a subject in seven other CCRB cases with 12 allegations, four of which were substantiated.
 - Case 201608051 involved a substantiated allegation of refusal to obtain medical treatment. The Board recommended Charges, and the NYPD implemented formalized training.
 - Cases 201808686 and 201808753 involved substantiated discourteous language allegations. The Board recommended Command Level Instructions, and the NYPD has not yet imposed discipline in both cases.
 - Case 201901734 involved a substantiated allegation of threat of arrest. The Board recommended Command Discipline A, and the NYPD has not yet imposed discipline.
 - § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation.
- On April 22, 2020, a request was submitted to determine if a Notice of Claim was filed; confirmation from the Office of the New York City Comptroller will be forwarded upon receipt [BR 21].

• [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]		
Squad No.:	<u>3</u>		
Investigator:	Magdalena Azmitia Signature	Investigator Magdalena Azmitia Print Title & Name	July 7, 2020 Date
Squad Leader:	Olga Golub Signature	SL Olga Golub Print Title & Name	07/07/2020 Date
Reviewer:	Signature	Print Title & Name	Date